



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROBERT AND ROSE VENER)

For Appellants: Meyer Berkowitz
Attorney at Law

For Respondent: Bruce W. Walker
 Chief Counsel

Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Robert and Rose Vener against a proposed assessment of additional personal income tax in the amount of **\$2,783.14** for the year 1974.

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Rose Vener is a party to this appeal solely because she filed a joint income tax return with her husband for 1974. Accordingly, only Robert Vener will hereafter be referred to as appellant.

The sole issue to be determined is whether appellant may deduct the loss arising from theft of electrical improvements to certain rental property owned by him.

At all times relevant here, appellant owned a small commercial building in Los Angeles, California. During 1970, appellant leased this building to Panel Ply Industries. As part of its consideration for the lease, Panel Ply made certain improvements to the building's electrical system (including addition of a transformer and other electrical equipment) with the understanding that such improvements would remain on the premises at the termination of Panel Ply's lease. At some time prior to June 24, 1974, Panel Ply abandoned the building and improvements and terminated its lease. The value of these improvements has never been reported by appellant as income.

On June 24, 1974, thieves entered appellant's building and removed many of the aforementioned improvements. Damage to the building itself was covered by insurance, but appellant sustained an uncompensated loss of \$25,297 as a result of the theft of the improvements. Appellant deducted this loss on his 1974 California income tax return. Respondent determined that deduction of this loss was improper because appellant's adjusted basis in the improvements was zero.

Under the provisions of section 17206 of the Revenue and Taxation Code, uncompensated theft losses incurred in a trade or business or in a transaction entered into for profit are deductible. Any deduction, however, is subject to the limitation that it must not exceed the amount of the property's adjusted basis. (Rev. & Tax. Code, § 17206, subd. (b).) As stated in respondent's regulations, this limitation means that a taxpayer may deduct as a theft loss only the lesser of either the amount of the actual fair market value of the property stolen or the amount of the taxpayer's adjusted basis in such property. (Cal. Admin. Code, tit. 18, regs. 17206(h), subd. (3), and 17206(g), subd. (2).)

In appellant's case, the lesser of these two amounts is zero. In accordance with the exclusionary provisions of section 17143 of the Revenue and Taxation Code, appellant did not report the value of the electrical improvements as income during the taxable year when Panel Ply Industries abandoned the building. Section 18055 of the same code provides, in relevant part that:

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Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such **property**, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under Section 17143

Accordingly, appellant's adjusted basis on these improvements cannot be increased by their value at the time of termination of the lease. As appellant did not otherwise incur any cost in securing the improvements, his adjusted basis for the stolen electrical equipment was zero.

Consequently, on the **basis** of the facts presented, and in accordance with sections 17206 and 18055 of the Revenue and Taxation Code, we conclude that appellant is not entitled to deduct any of the loss he incurred as a result of the theft of the electrical improvements.

For the above reasons, we sustain respondent's action.

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O R D E R

Pursuant to the views **expressed** in **the** opinion of the board on file in this proceeding, and good, cause appearing therefor,,

IT IS **HEREBY** ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax **Board on the** protest of Robert and Rose Vener against a proposed assessment of **addi-**
tional personal income **tax** in the amount of **\$2,783.14** for the year 1974, be and the same **is** hereby sustained.

Done at Sacramento, California, this 7th day of
March , 1979, by the State Board of Equalization.

William M. Brown Chairman
Paul J. Lee , Member
George R. Henry , Member
_____, Member
_____, Member